

FCC MAIL SECTION

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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)
)
 Implementation of the Subscriber Carrier)
 Selection Changes Provisions of the) CC Docket No. 94-129
 Telecommunications Act of 1996)
)
 Jordan-Soldier Valley Telephone Company)
 Petition for Waiver)

ORDER

Adopted: August 30, 2000

Released: August 31, 2000

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant Jordan-Soldier Valley Telephone Company (Jordan) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On June 12, 2000, Jordan filed a Petition for Waiver of Commission Rules relating to Jordan's purchase from Alpine Communications, L.C. (Alpine) of a single exchange located in Moorhead, Iowa (Waiver Petition). On July 17, 2000, Jordan supplemented the Waiver Petition (Supplement I) and supplied drafts of customer (continued....)

extent necessary to enable Jordan to become the preferred carrier of consumers currently presubscribed to Alpine Communications, L.C. (Alpine), without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. Jordan seeks a waiver of our verification rules to allow Jordan to be designated the preferred local and intraLATA long distance carrier for customers of Alpine without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant Jordan a waiver, subject to the conditions represented in its filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict

notification letters (Attachments A and B). On August 15, 2000, Jordan supplemented the Waiver Petition (Supplement II) and provided additional information about the transaction.

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order*, 14 FCC Rcd at 1593, 1594, paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that Jordan has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Jordan to transfer to its own customer base the affected Alpine customers. In the Waiver Petition, Jordan states that Alpine is transferring to Jordan a single exchange located in Moorhead, Iowa. Jordan will acquire substantially all of Alpine's assets used to provide local and intraLATA long distance telecommunications services to those lines, including the affected customer base, and will provide local services on a presubscription basis to Jordan's former customers.¹² Jordan states that the transfer will not result in an increase in monthly local service rates paid by the affected customers.¹³ Jordan notes that the customers will not be charged for the number change.¹⁴

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former Alpine customers might temporarily lose their presubscribed local and intraLATA long distance service when Alpine ceases to provide such service in the affected exchanges. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of local and intraLATA long distance service to the transferred customers.

7. We find that Jordan has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service, and because Jordan has agreed to notify the affected customers as described below. Jordan states that it will engage in a two-step process to notify the affected customers of the transaction.¹⁵ According to Jordan, prior to the proposed sale's consummation, Jordan will send these customers a "welcome letter" notifying them of that event, and assuring them that no charges or rate increases for local or intraLATA long distance service will be imposed as a result of the transaction.¹⁶ Jordan also will advise the affected customers in the welcome letters that, if

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² *Waiver Petition* at 2.

¹³ *Waiver Petition* at 3 and Supplement I, Attachment A.

¹⁴ *See id.*

¹⁵ *See* Supplement I, Attachments A and B.

¹⁶ *See* Supplement I, Attachment A.

they wish to change to a different intraLATA long distance service provider, Jordan will waive applicable switching fees for thirty days following the date on which Jordan begins to provide service.¹⁷ In addition, the welcome letters will provide customers with a toll-free number to call with any questions they may have about the transition.¹⁸ The second notification letter, which Jordan will send to the affected customers following the closing of the transaction, will reiterate these points.¹⁹ We conclude that these conditions will adequately protect the rights of the transferred customers of Alpine.²⁰

8. For the foregoing reasons, we grant Jordan a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Jordan's provision of customer notification, as described above and further detailed in the Waiver Petition and Supplements.

III. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by Jordan-Soldier Valley Telephone Company on June 12, 2000, and supplemented on July 17, 2000 and August 15, 2000, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters

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Associate Division Chief
Accounting Policy Division
Common Carrier Bureau

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See Supplement I, Attachment B.

²⁰ We also note that Jordan has committed to working with Alpine to investigate and resolve any outstanding customer complaints arising out of its provision of local and intraLATA long distance service. Supplement II.